

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Letters Patent Appeal No. 212 of 2006
with
Civil Application No.280 of 2006

Kailas Pandurang Pawar
and others ..Appellants

vs.

Thane Municipal Corporation
and others ..Respondents

Smt.Neeta Karnik for appellants.
Shri C.U.Singh, Sr.Counsel with Shri Rahul
Oak for respondent nos. 1 to 3

**CORAM: S.B.MHASE AND
Smt.V.K.TAHILRAMANI JJ.
15th January, 2007**

P.C.

1. Heard the learned Counsel.

2. Learned Counsel Smt.Karnik submits that after commencement of the dispute between the appellants and respondents, conciliation proceedings commenced before the Conciliation Officer. While the conciliation proceedings were pending, ULP complaint was filed under item 9 Schedule IV of the M.R.T.U and P.U.L.P.Act and in the said complaint interim application was made. The said interim application was rejected. As against that writ petition No.6365 of 2006 was preferred

before the learned single Judge which was rejected by the learned single Judge on the ground that it arose from the interim relief application and the Court is not desirous of entertaining it. The said order is challenged by filing the present L.P.A. The learned counsel further submits that pending these proceedings the conciliation proceedings were completed and the conciliation has failed and, therefore, now the Government will have to consider as to whether the reference is to be made or not to be made. However, the learned counsel also submits that if reference is made the Industrial Court will have to consider whether to grant the interim relief or not again if the application is made by one of the appellants. According to the learned Counsel, therefore, in the facts and circumstances this L.P.A. has rendered infructuous. However, the grievance of the appellants will be redressed if only clarification is given that the observations made by the learned single Judge in the order will not be binding on the Industrial Court while considering the interim relief application which is likely to be preferred in a reference which is likely to be made by the State Govt. The learned Counsel Shri Singh who appears for the respondents

submits that factual position as reported is correct. However, he submits that since the ULP complaint has already been filed the State Govt. in view of the provisions of sec.59 of MRTU and PULP Act will not be in a position to make a reference in respect of the same subject matter. However, Shri Singh has no objection to make a clarification to the effect that since all the observations made by the learned single Judge in writ petition no.6365 of 2006 are at interlocutory stage they will not in any way be binding on the Industrial Court at the final hearing of the complaint. Taking into consideration we dispose of the present L.P.A. as infructuous as submitted by the learned Counsel. We only make it clear that all the observations made by the learned single Judge are at the interim stage and they will not be binding as against the Industrial Court when the Industrial Court considers the application finally and/or at ad-interim stage if the reference is made by the State Govt. We make it clear that we are not making any observation in respect of the fact as to whether the Govt. should or should not make a reference. It will be the choice of the Govt. taking into consideration the merits and provisions of law. L.P.A.is

disposed of as infructuous.

(Smt.V.K.TAHILRAMANI J.)

(S.B.MHASE J.)